



1 ENERGY AND ENVIRONMENT CABINET

2 Department for Natural Resources

3 Division of Mine Permits

4 (Amendment)

5 405 KAR 10:050. Bond forfeiture.

6 RELATES TO: KRS 350.020, 350.060, 350.064, 350.093, 350.095, 350.130, 350.131,
7 350.151, 350.465, 30 C.F.R. Parts 730-733, 735, 800.50, 917, 30 U.S.C. 1253, 1255

8 STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.060, 350.064,
9 350.130, 350.151, 350.465, 30 C.F.R. Parts 730-733, 735, 800.50, 917, 30 U.S.C. 1253, 1255

10 NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 [~~in-pertinent part~~]
11 requires the cabinet to regulate surface coal mining and reclamation operations in a manner as to
12 insure that satisfactory reclamation is accomplished. This administrative regulation sets forth the
13 procedures and criteria by means of which a bond may be forfeited to the cabinet. This
14 administrative regulation sets forth that certain violations of KRS Chapter 350 and administrative
15 regulations promulgated pursuant to that chapter may cause a bond to be forfeited. This
16 administrative regulation sets forth that a hearing may be requested before forfeiture can be
17 effected. This administrative regulation specifies a method to determine the amount of bond
18 forfeiture. This administrative regulation establishes criteria under which unused forfeited bond
19 funds shall be returned to the person from whom they were collected.

20 Section 1. General. (1) The cabinet shall forfeit all of the remaining bond amount for any
21 permit or increment pursuant to the procedures and criteria of this administrative regulation.

1 (2) The cabinet may withhold forfeiture if the permittee or the surety agrees to a compliance
2 schedule to correct the violations of the permit or bond conditions.

3 (3) The cabinet shall withhold forfeiture and allow the surety or other financial institution
4 providing bond to complete the reclamation plan if the surety or other financial institution can
5 demonstrate the ability to complete the reclamation plan, including achievement of the capability
6 to support the post-mining land use approved by the cabinet, and will undertake to do so within a
7 reasonable time frame and agrees to a compliance schedule. Neither the surety company nor other
8 financial institution shall employ anyone to perform the measures who has been barred from
9 mining pursuant to the provisions of KRS Chapter 350.

10 Section 2. Procedures. (1) If forfeiture of the bond is required by Section 3 of this
11 administrative regulation, the cabinet shall:

12 (a) Send written notification by certified mail, return receipt requested, to the permittee,
13 and to the surety on the bond, if applicable, of the cabinet's determination to initiate forfeiture of
14 the bond and the reasons for the forfeiture;

15 (b) Advise the permittee and surety, if applicable, of their right to challenge the
16 determination pursuant to 400 KAR 1:110, Section 9; and

17 (c) If no hearing is requested within thirty (30) days following notification and the bond
18 proceeds are not received, the secretary shall enter a final order of forfeiture and the cabinet shall
19 proceed in an action for collection on the bond.

20 (2) The cabinet may, as an alternative to following the procedures of subsection (1) of this
21 section, initiate formal hearing procedures concerning forfeiture of the bond alone or in
22 conjunction with the cabinet's action for other appropriate remedies against the permittee pursuant
23 to 400 KAR 1:110, Section 5.

1 (3) The cabinet shall utilize funds collected from bond forfeiture to complete the
2 reclamation plan on the permit area or increment on which bond coverage applied, and to cover
3 associated administrative expenses. The funds shall be deposited in an appropriate account for the
4 payment of these costs. Funds remaining after reclamation shall be returned to the person from
5 whom the forfeiture proceeds were received, subject to the cabinet's right to attach or setoff the
6 proceeds under state law.

7 (4) In the event the amount forfeited is insufficient to pay for the full cost of reclamation,
8 the permittee or operator shall be liable for remaining costs. The cabinet may complete, or
9 authorize completion of, reclamation of the bonded area and may recover from the permittee or
10 operator all costs of reclamation in excess of the amount forfeited.

11 (5) Return of unused forfeited bond funds for interim or permanent program permit area
12 over-lapped by permanent program permit area. If the cabinet has not completed the reclamation
13 plan on a permit area under 30 CFR Part 715 [~~405 KAR Chapter 1 or 3~~] for which the bond was
14 forfeited on or after July 15, 1988, or if the cabinet has not completed the reclamation plan on a
15 permit area under 405 KAR Chapters 7-24 for which the bond was forfeited, and if the permit area
16 and any related off-permit disturbances are entirely contained within the permit area of a
17 subsequent valid permit under 405 KAR Chapters 7-24 for which the bond is in force, the cabinet
18 shall retain the funds from the forfeited bond until the entire overlapped permit area and any related
19 off-permit disturbances have been disturbed by the overlapping permittee and then shall return the
20 unused funds to the person from whom the forfeiture proceeds were received, subject to the
21 cabinet's right to attach or set off the proceeds under state law.

22 Section 3. Criteria for Forfeiture. (1) A bond for a permit area or increment shall be
23 forfeited, if the cabinet finds that:

1 (a) The permittee has violated any of the terms or conditions of the bond and has failed to
2 take corrective action;

3 (b) The permittee has failed to conduct the surface mining and reclamation operations in
4 accordance with KRS Chapter 350, the conditions of the permit or 405 KAR Chapters 7 through
5 24 within the time required;

6 (c) The permit for the area or increment under bond has been revoked or the operation
7 terminated, unless the permittee, surety, or other financial institution providing bond assumes
8 liability pursuant to an agreement for the completion of reclamation; or

9 (d) The permittee, surety, or other financial institution providing bond has failed to comply
10 with a compliance schedule approved pursuant to Section 1(2) or (3) of this administrative
11 regulation.

12 (2) A bond may be forfeited if the cabinet finds that:

13 (a)1. The permittee has become insolvent; or

14 2. A creditor of the permittee has attached or executed judgment against the permittee's
15 equipment, materials, or facilities, at the permit area; and

16 (b) The permittee cannot demonstrate or prove the ability to continue to operate in
17 compliance with KRS Chapter 350, 405 KAR Chapters 7 through 24, and the permit.

18 (3) The cabinet may forfeit a bond solely upon the permittee's failure to pay penalties or
19 fines (if all reclamation requirements have been fully met) and retain the bond proceeds, or portion
20 thereof as necessary to offset the penalty or fine owed (including administrative costs incurred by
21 the cabinet), but the cabinet shall forfeit a bond under this circumstance only after the five (5) year
22 liability period has expired; except that for surety bonds or bonds secured by a letter of credit:

1 (a) In no event shall the cabinet take any action to forfeit a surety bond or bond secured by
2 a letter of credit under this circumstance until reclamation phase I and II monies have been released
3 and the five (5) year liability period has expired; and

4 (b) If a forfeiture of a surety bond or a bond secured by a letter of credit under this
5 circumstance has occurred, the cabinet shall not retain the surety bond or bond secured by letter of
6 credit or any proceeds thereof and the permittee shall continue to be responsible for payment of
7 the penalties or fines as well as administrative costs incurred by the cabinet.

8 Section 4. Forfeiture Amount. The cabinet shall forfeit the entire amount of the bond for
9 the permit area or increment.

405 KAR 10:050 approved for filing.
Pages (1-5)

9/13/2019

Date

Charles G. Snavely

Charles G. Snavely, Secretary
Energy and Environment Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 26, 2019 at 5:00 P.M. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone: (502) 782-6720, fax: (502) 564-4245, email: michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation No.: 405 KAR 10:050
Contact Person: Michael Mullins

Contact number: (502) 782-6720
Email: michael.mullins@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes certain violations of KRS Chapter 350 and administrative regulations that may cause a bond to be forfeited.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish procedures and criteria for forfeiting bonds.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 350.060 authorizes the department to forfeit performance bonds for violations of KRS Chapter 350 and the permanent program administrative regulations. This administrative regulation conforms to the authorizing statutes by establishing those criteria.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the criteria and procedures for forfeiture of a performance bond.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment inserts a reference to 30 CFR 715 which is the appropriate federal citation related to initial program administrative regulations.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to remove a reference to the interim program administrative regulations and inserting a citation to the federal initial program administrative regulations.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by removing a reference to the interim program administrative regulations.

(d) How the amendment will assist in the effective administration of the statutes: KRS 350.060 provides the department the authority to regulate coal mine bonding. These amendments are necessary to remove a reference to the interim program administrative regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment would apply to any entity that operates coal mines within Kentucky. There are approximately 174 licensed mines in the Commonwealth.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed in question (3) above will need to refer to 30 CFR Part 715 in order to interpret Section 5(5) of this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not a cost increase associated with the proposed amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be minimal benefit associated with this amendment. The amendments simply inserts a reference to 30 CFR 715 which is the appropriate federal citation related to initial program administrative regulations

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There will be no costs to the department associated with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the department associated with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be a combination of general funds and restricted funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The amendments to this administrative regulation will not require an increase in fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish or increase any fees.

(9) TIERING: Is tiering applied? (Explain why or why not) No. All entities that operate a coal mine in the Commonwealth will be subject to the same requirements related to bonding.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Administrative Regulation No.: 405 KAR 10:050
Contact Person: Michael Mullins, Reg. Coordinator

Contact number: (502) 782-6720
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1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Mine Permits and the Division of Mine Reclamation and Enforcement.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.020, 350.028, 350.060, 350.064, 350.130, 350.151, 350.465, 30 C.F.R. Parts 730-733, 735, 800.50, 917, 30 U.S.C. 1253, 1255.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amended administrative regulation will not generate any new revenue for the state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amended administrative regulation will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):	There is no known effect on current revenues.
Expenditures (+/-):	There is no known effect on current expenditures.
Other Explanation:	There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation No.: 405 KAR 10:050
Contact Person: Michael Mullins, Reg. Coordinator

Contact number: (502) 782-6720
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1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. 800.50
2. State Compliance Standards. KRS 350.060.
3. Minimum or uniform standards contained in the federal mandate. The C.F.R. citations listed above set the minimum information related to bond forfeiture.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The amendments simply inserts a federal citation in the place of the interim program administrative regulations which were repealed in 2018.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

